

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190129

Docket: A-324-17

Citation: 2019 FCA 20

**CORAM: NADON J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

BEST BUY CANADA LTD.

Respondent

Heard at Ottawa, Ontario, on October 24, 2018.

Judgment delivered at Ottawa, Ontario, on January 29, 2019.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**NADON J.A.
WEBB J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

I. Overview

[1] The appellant Attorney General of Canada appeals the decision of the Canadian International Trade Tribunal (the Tribunal) dated July 26, 2017 (AP-2016-027). The Tribunal determined that certain floor stands for flat-panel televisions (the Goods) are properly classified under tariff item number 8529.90.90 of the schedule to the *Customs Tariff*, S.C. 1997, c. 36 [*Customs Tariff*] as “other parts” suitable for use solely or principally with televisions under

tariff heading numbers 85.25 to 85.28, as opposed to “other metal furniture” or “other wooden furniture” under tariff numbers 9403.20.00 and 9403.60.10, respectively.

[2] The Tribunal further found that classifying the Goods under tariff heading number 85.29 aligned with its prior decision in *Sanus Systems v. President of the Canada Border Services Agency*, (8 July 2010) AP-2009-007 (CITT), which determined that certain television stands, albeit of a different model from the Goods, were classifiable as parts suitable for use solely or principally with televisions under heading 85.29. The Tribunal declined to apply two World Customs Organization (WCO) opinions authored in August and September 2015 (the Opinions), which conclude that two different models of flat-panel television stands are classifiable as furniture under heading 94.03. The Tribunal found that the Opinions were not relevant to the present matter because the facts differed, as unlike the Goods, the models at issue in the Opinions had castor wheels and were not designed for domestic use.

II. Analysis

[3] In my view, the issue to be determined is whether the Tribunal considered the Opinions. Section 11 of the *Customs Tariff* requires that “regard shall be had” to opinions published by the WCO when interpreting headings and subheadings under the tariff classification system, as follows:

Interpretation

11 In interpreting the headings and subheadings, regard shall be had to the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System... [Emphasis added]

[4] The phrase “regard shall be had” under section 11 of the *Customs Tariff* entails that, while not binding, opinions of the WCO must “at least be considered” in determining the classification of goods imported into Canada (*Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 at para. 8, [2016] 2 S.C.R. 80 [*Igloo Vikski*]). Similarly, this Court has examined the definition of “regard” in the context of section 11 of the *Customs Tariff*, and found that it means “to consider, heed, take into account, pay attention to, or take notice of” (*Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 at para. 13, [2004] F.C.J. No. 615 [*Suzuki*]). Having “regard” further entails that the Tribunal should respect WCO opinions unless there is “sound reason” to do otherwise (*Suzuki* at para. 13). The Tribunal may ultimately disagree with the Opinions but it must consider them and provide a sound reason as to why it chose not to follow them.

[5] In this matter, the Tribunal did not consider the analyses offered in the Opinions. Rather, the Tribunal determined that the Opinions were not relevant on the sole basis that the models of flat-panel television stands that the WCO considered were factually distinguishable because they had castor wheels and were not designed for domestic use. However, the addition of castor wheels to the same type of flat-panel television stand is clearly an insignificant distinction which does not change the nature of the Goods. Further, heading 94.03 appears to cover furniture in some instances for use in both private dwellings and public locations. In my view, it is far from clear why the absence of castors and the location of the proposed use of the stands would make the stands in this case a part suitable for use solely or principally with televisions. Although the Opinions were relevant because they dealt with goods that were materially the same as those

before the Tribunal, the Tribunal failed to consider or have regard to the Opinions as required under the *Customs Tariff*.

[6] The standard of review applicable to a tariff classification decision of the Tribunal is reasonableness (*Igloo Vikski* at para. 16). For the reasons given, the Tribunal's decision is unreasonable. Accordingly, I would allow the appeal with costs and set aside the Tribunal's decision. In my view, the matter should be sent back to the Tribunal for redetermination in accordance with these reasons.

“D. G. Near”

J.A.

“I agree
M. Nadon J.A.”

“I agree
Wyman W. Webb J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A DECISION OF THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL DATED JULY 26, 2017, APPEAL NO. AP-2016-027**

DOCKET: A-324-17

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. BEST BUY CANADA
LTD.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 24, 2018

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: NADON J.A.
WEBB J.A.

DATED: JANUARY 29, 2019

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